

**PUBLIC NOTICE**  
**INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION**  
**CITY OF SAN JOSÉ, CALIFORNIA**

**File No. and Project Name/Description:**

File No. PDC10-025/ North Capitol Villas. A Planned Development Rezoning from R-1-8 Single-Family Residence District to A(PD) Planned Development Zoning District to allow for the development of up to 96 single family attached residences on an approximately 4.3 gross acre site located at the northeast corner of N. Capitol Avenue and Sierra Road (1328 N. Capitol Avenue). The project is located in Council District: 4.

California State Law requires the City of San José to conduct environmental review for all pending projects. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. Based on an initial study, the Director of Planning, Building & Code Enforcement has concluded that the project described above will not have a significant effect on the environment. The project location **does not** contain a listed toxic site.

The purpose of this notice is to inform the public of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on June 20, 2011, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **June 1, 2011**, and ends on **June 20, 2011**. Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 200 East Santa Clara Street, San José CA 95113-1905. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and online at <http://www.sanjoseca.gov/planning/eir/MND.asp>

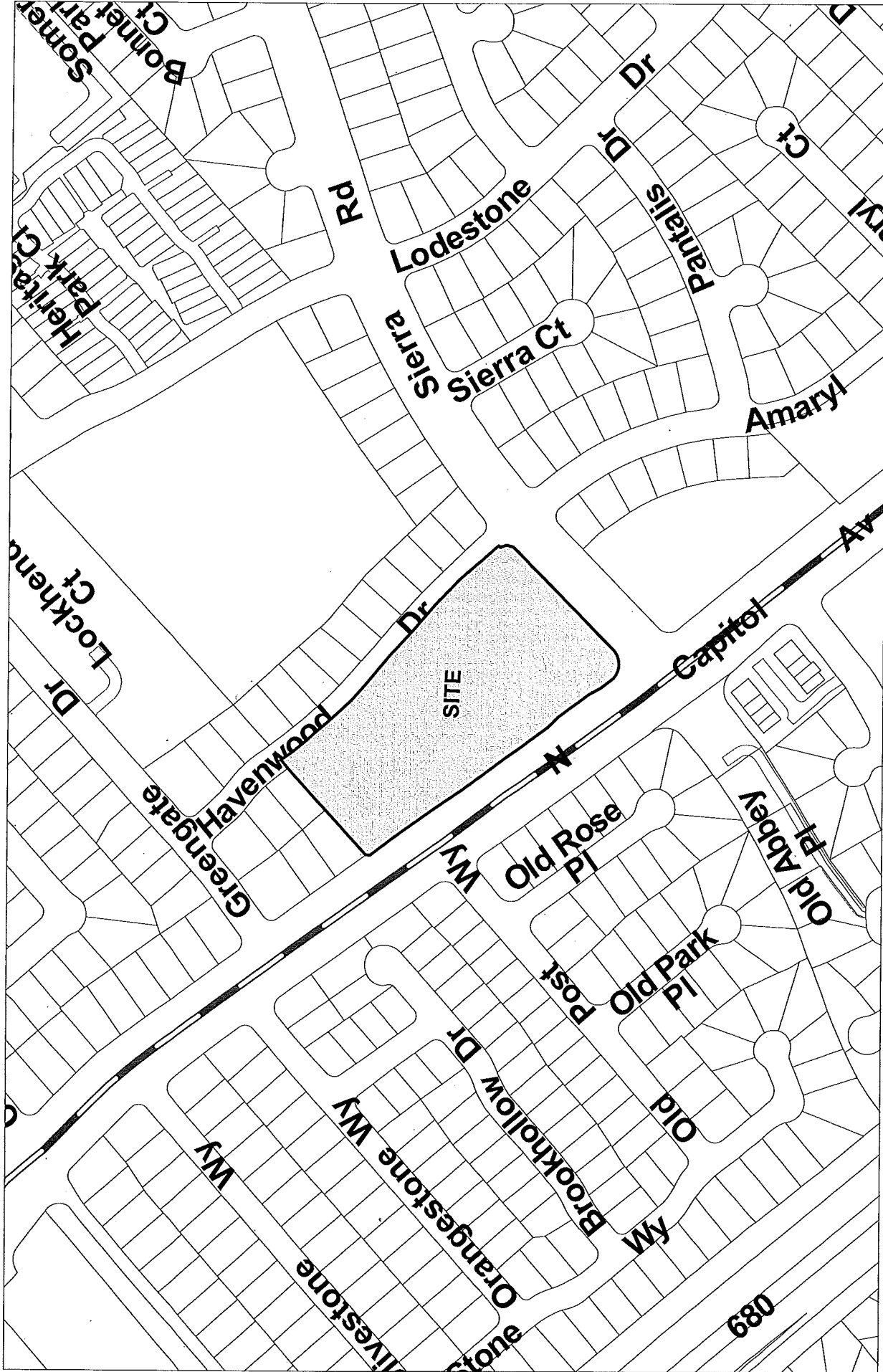
For additional information, please call Lesley Xavier at (408) 535-7852.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

Circulated on: June 1, 2011

  
Deputy





File No: PDC10-025  
District: 4

## LOCATION



Prepared by the Department of Planning,  
Building and Code Enforcement  
10/29/2010

**MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

**NAME OF PROJECT:** *North Capitol Villas*

**PROJECT FILE NUMBER:** PDC10-025

**PROJECT DESCRIPTION:** A Planned Development Rezoning from the R-1-8 Single-Family Residence District to A(PD) Planned Development Zoning District to allow up to 96 single family attached residences on an approximately 4.3 gross acre site.

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** Northeasterly corner of N. Capitol Avenue and Sierra Road (1328 N. Capitol Avenue); (APN589-19-063)

**COUNCIL DISTRICT:** 4

**APPLICANT CONTACT INFORMATION:**

Chris Davenport, Trumark Companies  
4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94506-4668  
925-648-8300; (fax) 925-648-3130

**FINDING:**

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

**MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL**

- I. AESTHETICS.** The project will not have a significant impact on aesthetics or visual resources, therefore no mitigation is required.
- II. AGRICULTURE AND FOREST RESOURCES.** The project will not have a significant impact on agriculture or forest resources, therefore no mitigation is required.

### III. AIR QUALITY.

#### Temporary Construction Air Quality

The following Best Management Practices shall be required of construction contracts and specifications for all construction to prevent visible dust emissions from leaving the site:

- a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- b. All haul trucks transporting soil, sand or other loose material off-site shall be covered.
- c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- e. All roadways, driveways and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- f. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by CCR Title 13). Clear signage shall be provided for construction workers at all access points.
- g. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- h. A publicly-visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints shall be posted. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

### IV. BIOLOGICAL RESOURCES.

#### Raptors

- a. If possible, construction should be scheduled between September and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified biologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying biologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the biologist shall, in consultation with the California Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified biologist has determined that the young birds have fledged. The applicant shall submit a report to the

City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading or building permit.

#### Burrowing Owls

- b. A pre-construction survey for burrowing owls shall be conducted by a qualified biologist within 30 days prior to any ground disturbance activities.
- c. A buffer zone of a minimum of 250 feet shall be established around active burrowing owl nesting sites if nesting burrowing owls are discovered during pre-construction surveys conducted between February 1st and August 31st, and no disturbance shall occur within the buffer zone until a qualified biologist has determined that the young birds have fledged.
- d. No disturbance shall occur within 160 feet of occupied burrows if over-wintering burrowing owls are discovered using the site during the non-breeding season (September 1st through January 31st).
- e. If any burrowing owls are discovered using the site during the pre-construction surveys during the non-breeding season, a burrowing owl relocation plan to be approved by the California Department of Fish and Game shall be developed and implemented, including passive measures such as installation of one-way doors in active burrows for up to four days, careful excavation of all active burrows after four days to ensure no owls remain underground, and filling all burrows in the construction area to prevent owls from using them.
- f. A biologist report outlining the results of the pre-construction burrowing owl surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the City's Environmental Principal Planner prior to the issuance of a grading permit.

#### Bats

- g. Surveys for roosting bats shall be conducted by a qualified bat biologist no more than thirty (30) days prior to any building demolition or removal, construction activities, or oak tree relocation and/or removal. If no bats are observed to be roosting in these features, then no further action would be required and construction activities could proceed. If a female or maternity colony of bats is found on the project site, and the project can be constructed without disturbance to the roosting colony, a qualified bat biologist shall designate buffer zones (both physical and temporal) as necessary to ensure the continued success of the colony; buffer zones may include a 200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (after July 31st and before March 1st).
- h. If an active maternity roost is known to occur on the site and the project cannot be conducted outside of the maternity roosting season, bats shall be excluded after July 31st and before March 1st to prevent the formation of new maternity colonies. Such exclusion shall occur, under the direction of a qualified bat biologist, by sealing openings and providing bats with one-way exclusion doors. Bat roosts shall be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with California Department of Fish and Game requirements.

- i. A biologist report outlining the results of pre-construction bat surveys and any recommended buffer zones or other mitigation shall be submitted to the City's Environmental Principal Planner and shall be approved to the satisfaction of the Director of Planning prior to the issuance of any grading, building, or tree removal permit.

**V. CULTURAL RESOURCES.** The project will not have a significant impact on cultural resources, therefore no mitigation is required.

**VI. GEOLOGY AND SOILS.**

Design-Level Geotechnical Investigation

- a. A design-level geotechnical report shall be conducted at the PD Permit stage to evaluate potential impacts due to undocumented fill, loose surficial soils, expansive soils, etc.; and mitigation measures, including site grading requirements, utilization of special foundations and control of drainage, shall be developed and implemented as warranted.

**VII. GREENHOUSE GAS EMISSIONS.** The project will not have a significant impact due to greenhouse gas emissions, therefore no mitigation is required.

**VIII. HAZARDS AND HAZARDOUS MATERIALS.**

General

- a. Prior to issuance of a Grading Permit, a Soil Management Plan shall be developed to the satisfaction of the Environmental Compliance Officer of the City's Environmental Services Department and the appropriate regulatory agency based on jurisdiction and type of hazardous material. The Soil Management Plan shall establish practices for managing and handling buried structures, wells, burn areas, debris and/or impacted soil if these materials/structures are encountered prior to or during demolition and/or site grading. The measures identified in the Soil Management Plan, including special handling and/or disposal measures, shall be implemented as warranted.

Soil Contamination

*Organochlorine Pesticides*

- b. Soil at the location of the sample with the chlordane concentration detected above the residential CHHSL (SS-1) shall be over-excavated for appropriate offsite disposal.
- c. Soil at the location of the sample with the chlordane concentration detected above the residential CHHSL and the California hazardous waste limit (SS-2) shall be over-excavated for appropriate offsite disposal.

*Metals in Soil*

- d. Soil at the location of the sample with the cadmium concentration detected above the residential CHHSL (SS-5) shall be over-excavated for appropriate offsite disposal.

- e. Soil at the location of the samples with the lead concentrations detected above the residential CHHSL (SS-5 and SS-24) shall be over-excavated for appropriate offsite disposal.

*Petroleum Hydrocarbons*

- f. Soil at the location of the sample with the TPHd and TPHmo concentrations detected above the residential ESLs (SS-5) shall be over-excavated for appropriate offsite disposal.

*Polynuclear Aromatic Hydrocarbons (PAHs)*

- g. Soil at the location of the samples with the PAHs concentrations detected above the residential RSLs (SS-3 and SS-24) shall be over-excavated for appropriate offsite disposal.

*Verification and/or Oversight*

- h. Verification samples shall be collected and analyzed for chlordane, cadmium, lead, TPHd and TPHmo, and/or PAHs to document that the impacted soil has been sufficiently removed from the site.
- i. Regulatory agency oversight shall be requested if significantly elevated levels of contaminants of concern are detected in the soil samples.

**IX. HYDROLOGY AND WATER QUALITY.** The project will not have a significant hydrology and water quality impact, therefore no mitigation is required.

**X. LAND USE AND PLANNING.** The project will not have a significant land use impact, therefore no mitigation is required.

**XI. MINERAL RESOURCES.** The project will not have a significant impact on mineral resources, therefore no mitigation is required.

**XII. NOISE.**

Exterior Noise

- a. 42-inch-high solid railings shall be constructed at all elevated decks along N. Capitol Avenue and Sierra Road.

Interior Noise

- b. Windows and sliding glass doors shall be maintained closed and STC 30 to 33 or higher rated windows and doors shall be installed at homes along N. Capitol Avenue.
- c. Windows and sliding glass doors shall be maintained closed and STC 26 to 28 or higher rated windows and doors shall be installed at homes along Sierra Road and in other portions of the site.
- d. All units shall be equipped with forced air ventilation systems to allow the occupants the option of maintaining the windows closed to control noise, and maintain an interior noise level of 45 dB DNL.
- e. Prior to issuance of building permits, the developer shall retain a qualified acoustical consultant to check the building plans for all units to ensure that interior noise levels will be attenuated to 45 dB DNL to the satisfaction of the Director of Planning, Building and Code Enforcement.



- XIII. POPULATION AND HOUSING.** The project will not have a significant population and housing impact, therefore no mitigation is required.
- XIV. PUBLIC SERVICES.** The project will not have a significant impact on public services, therefore no mitigation is required.
- XV. RECREATION.** The project will not have a significant impact on recreation, therefore no mitigation is required.
- XVI. TRANSPORTATION / TRAFFIC.** The project will not have a significant traffic impact, therefore no mitigation is required.
- XVII. UTILITIES AND SERVICE SYSTEMS.**

Sanitary Sewers

- a. A portion of the sanitary sewer line in N. Capitol Avenue near Hostetter Road shall be upgraded to its ultimate design size prior to project occupancy on a cost sharing basis with the City of San Jose.

- XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.** The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

## **PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **June 20, 2011**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;  
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

Circulation period, from June 1, 2011 to June 20, 2011



Deputy

Revised 5-6-11 jam